

UST POLICY COMMISSION MEETING

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Phoenix, Arizona

January 22, 2003

9:13 o'clock a.m.

JENNIFER SCHUCK, RMR, CRR

Certified Court Reporter

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1                   THE MEETING OF THE UST POLICY COMMISSION held on  
2   January 22, 2003, at 9:13 o'clock a.m., at the Arizona  
3   Department of Environmental Quality, 1110 W. Washington,  
4   Room 250, Phoenix, Arizona, in the presence of:

5                   Michael O'Hara, Chairman

6                   Roger Beal

                  Gail Clement

7                   Shannon Davis

                  Theresa Foster

8                   Harold Gill

                  Tamara Huddleston

9                   Leandra Lewis

                  Andrea Martincic

10                  Myron Smith

                  George Tsiolis

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1 Phoenix, Arizona

January 22, 2003

2 9:13 o'clock a.m.

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4 P R O C E E D I N G S

5 CHAIRMAN O'HARA: I would like to welcome  
6 everyone to the January meeting of the UST Policy  
7 Commission.

8 Before we get started, you probably recognize  
9 some new faces on the Commission. And I would like to  
10 welcome -- We have three new members currently, and I  
11 think there is one more on the way. To my right, Gail  
12 Clement, and to my left, Andrea Martincic. And our third  
13 member is Leandra Lewis. I don't know that she's here  
14 today. She is taking Karen Holloway's spot. And then I  
15 think finally George Tsiolis is going to be a new member.  
16 I think that's how you pronounce his name. I may have  
17 mispronounced it. And I want to welcome our new members  
18 and look forward to your participation.

19 And I would like to thank our outgoing members,  
20 Karen Holloway, Michael Denby, and Elijah Cardon, and  
21 thank them for their participation and valuable  
22 contributions.

23 Moving forward to the roll-call, I would like to  
24 start on my left with Myron Smith.

25 MR. SMITH: Myron Smith.

1 MS. MARTINCIC: Andrea Martincic.

2 MS. HUDDLESTON: Tamara Huddleston.

3 MS. DAVIS: Shannon Davis.

4 MR. O'HARA: Michael O'Hara.

5 MR. GILL: Hal Gill.

6 MR. BEAL: Roger Beal.

7 MS. FOSTER: Theresa Foster.

8 MS. CLEMENT: Gail Clement.

9 CHAIRMAN O'HARA: Great.

10 Item Number 2 is the approval of the minutes  
11 from the December meeting. Has everyone received the  
12 minutes and had an opportunity to review them?

13 MR. BEAL: I don't think I have seen them.

14 CHAIRMAN O'HARA: You haven't seen them?  
15 Did anybody receive them on e-mail? Did you get them,  
16 Theresa?

17 MS. FOSTER: I got an electronic copy.

18 MR. GILL: I got an electronic copy.

19 CHAIRMAN O'HARA: You didn't?

20 MR. BEAL: I don't think so.

21 MR. SMITH: We can postpone it for a month.

22 CHAIRMAN O'HARA: Why don't we postpone them  
23 and make sure all the new members get them all.

24 MS. FOSTER: Mr. Chairman, may I suggest,  
25 the electronic copy is really nice. But when you've got

1 120, 150 pages to look through electronically, it is very  
2 hard to sit there and stare into a screen. Could we get  
3 copies -- hard copies? I hate to ask.

4 CHAIRMAN O'HARA: I know we used to.

5 MR. JOHNSON: You still want those? We can  
6 get those for you, sure.

7 CHAIRMAN O'HARA: Thank you, Al.

8 We'll move on to Item Number 3. Topic is to  
9 identify and discuss stakeholder proposed legislation, and  
10 I put this item on the agenda. I know we had an earlier  
11 presentation on a bill that suggested raising the UST tax  
12 by another penny a gallon. That was one proposed  
13 legislation. I just wanted to put the topic on the agenda  
14 to see if anyone was aware of additional legislation that  
15 could be brought forth to the Commission so we could  
16 review and possibly make recommendations prior to the  
17 legislature voting on it.

18 Is anyone aware of any pending legislation?  
19 Anyone -- I'll take comments from the public also, if  
20 there is any proposed legislation anyone is aware of.

21 Would the Commission members like to hear  
22 proposed legislation and possibly vote on that going  
23 forward?

24 MR. SMITH: Yeah. I think it is important  
25 that we stay abreast of what the community and the

1 business community and the ADEQ are planning for the  
2 upcoming year because it will ultimately affect all of us  
3 here, so I think we should have somewhat of a voice in it.

4 MR. O'HARA: I can continue this agenda item  
5 to next month; and in the interim, maybe we could try to  
6 identify any proposed legislation and have a presentation  
7 made. So anyone hears of any, please let us know.

8 Any other comments on Item 3 from the Commission  
9 members?

10 MR. BEAL: I think there is a couple of -- I  
11 know that that penny-a-gallon thing is probably going  
12 ahead anyway. Paul, is that right, was going to do that.  
13 We had some discussions about funding other areas too. I  
14 don't know if that would tie into that or not, or should  
15 it be discussed in that way?

16 CHAIRMAN O'HARA: You mean like the  
17 subcommittee meetings we're having on funding?

18 MR. BEAL: Right.

19 CHAIRMAN O'HARA: We could look at that.

20 MR. BEAL: If there is an impact, that would  
21 allow us to support that or give us more reason to --

22 CHAIRMAN O'HARA: Right. I think we are  
23 also having a presentation. It is coming up later on the  
24 UST inspection and compliance program. We could probably  
25 at that time look at funding situations in total. We

1 probably need to make a recommendation in the next month  
2 or so on that bill if we want to be heard.

3 MR. BEAL: I guess that's why I'm saying  
4 this now as you are talking about proposed legislation  
5 that we know is going forward and what the impact might be  
6 or the need for it as to what we're doing anyway. I just  
7 say that. Thank you.

8 CHAIRMAN O'HARA: Thanks. Any other  
9 comments from the Commission members?

10 Any members of the public like to speak?

11 Moving on to Item 4, ADEQ updates. The first  
12 item is the SAF monthly report. I think Judy Navarrete is  
13 going to make a small presentation.

14 MS. NAVARRETE: Yes. The monthly report is  
15 back here on the table if you are interested, and I handed  
16 it out to the Commission. The last two months we have had  
17 very good months, and we've reduced the backlog by  
18 approximately 150 as opposed to what's coming in and what  
19 we're putting out. So doing very well in that. Hope to  
20 continue in that. And if there is any questions on this  
21 report, I can answer them.

22 MR. GILL: Judy, I was looking through the  
23 last four, and I think I'm going to have to agree with  
24 Roger's original suggestion. Is there any way to graph  
25 this because I really have a really hard time making heads

1 or tails what it is really actually saying. And I think  
2 we need to know what are the -- how many final  
3 determinations are finally made per month because  
4 that's -- the interim determinations can be -- like we  
5 discussed before, can be AN letters which are requesting  
6 more information. And so it's not -- I don't really see  
7 that as getting rid of the backlog.

8 MS. NAVARRETE: An AN is not an interim  
9 determination. An interim determination is it has gone  
10 through the process and they've come up to make a  
11 determination. An interim determination can go final if  
12 it is not appealed.

13 MR. GILL: Can we just -- can we add how  
14 many final determinations are being done per month because  
15 that's really what we need to see, what is finally out and  
16 done and we're -- it still isn't being recycled.

17 MS. NAVARRETE: That can be added as another  
18 number. But actually reducing -- if you are interested in  
19 what's had a determination on it and what's reducing the  
20 backlog, it is your interim determination.

21 MR. GILL: Well, but isn't --

22 MS. NAVARRETE: Because the final can go on  
23 and on and on for months and months and months if it is  
24 appealed, depending on how long the process takes.

25 MR. GILL: I guess where I'm coming from is



1 I am not hearing from anybody that they're seeing any  
2 changes on what -- That's why I don't understand the  
3 numbers. If we're saying -- what did you say, 150 -- or  
4 115 this month? But if we're not seeing any changes in  
5 what we are getting in the mail or if we're not seeing --  
6 we're seeing the same items that we're having to appeal,  
7 then what have we -- I'm trying to figure out what number  
8 and what would mean more to us as far as what is actually  
9 occurring.

10 And I think one way, as Roger suggested, would  
11 be graphing it because it is just really difficult to  
12 figure out. I was trying to figure out how to do it  
13 myself. It is a hard way to figure out what this is  
14 truly, truly saying. In other words, if -- I guess the  
15 main thing is that I'm not hearing from the  
16 owner-operators, consultants that call me that they're  
17 seeing a huge change in what's happening. And so if  
18 they're not seeing a huge change, I don't know what the  
19 numbers mean.

20 MS. NAVARRETE: Is it a huge change in  
21 process -- Hal, is it a huge change in process, or is it a  
22 huge change in how many determinations are being made?

23 MR. GILL: They are getting the same  
24 determinations. They are getting the same denials. They  
25 are having to respond over and over again. That's what

1     they're telling me when they call.

2                   MS. NAVARRETE:   That's not a numbers  
3     measurement.   That's the process.

4                   MR. GILL:   But it is having to go back  
5     again, if it is not --

6                   CHAIRMAN O'HARA:   If I understand it right,  
7     it is two separate issues.   One is the matter of the  
8     backlog were claims that had never been reviewed at all,  
9     no interim determinations.   And we are seeing dramatic  
10    progress in getting an initial review on those claims.

11                   MS. NAVARRETE:   That's correct.

12                   CHAIRMAN O'HARA:   I think the other issue  
13    you are bringing up is the types of denials.   Are we  
14    seeing any change in the types of denials?   And what you  
15    might be able to graph is appeals both retroactively and  
16    going forward and seeing if there is any change in the  
17    level of appeals.

18                   MS. NAVARRETE:   The change in the level of  
19    appeals right now is going to be distorted because we're  
20    getting numerous appeals on the 90-day determination, that  
21    we're failing to make the 90-day determination.   When I  
22    started this, we had 1100 backlogged, 800 or so were over  
23    a year.   I can't do 800 in a month.   So the more appeals I  
24    get in, the more it just backs us up and the more we have  
25    to answer to those appeals.   And it is not an actual --

1 something that we can do anything about.

2 We're working as hard as we can to get these  
3 determinations out the door. The more you appeal, the  
4 more I have to work on appeals. And it is not because of  
5 determinations. We have a number -- you know, the 90-day  
6 appeals outnumber the appeals we're getting on our  
7 determinations.

8 CHAIRMAN O'HARA: Is there any way to  
9 separate those types of appeals from standard appeals?

10 MS. NAVARRETE: I can do that.

11 CHAIRMAN O'HARA: Would that be helpful?

12 MS. NAVARRETE: All that stuff takes more  
13 administrative time, and it takes time away from  
14 processing. But I can do that, if you would like it.

15 MR. GILL: I guess what the stakeholders  
16 want to see, and I think ultimately what the Policy  
17 Commission wants to see, in tracking this is that it is --  
18 not just more paperwork is being pushed around but  
19 something is actually being done. And the  
20 determinations -- And I understand what you are saying  
21 about 115 determinations go out. But if the  
22 determinations have not changed in what we've seen in the  
23 past, then we haven't accomplished anything. We are  
24 getting them out the door, but they are all going to come  
25 right back. And that's what I'm getting at. If they are

1 coming back as appeals because we are seeing the exact  
2 same issues in the determinations, they are going to be  
3 appealed, then we haven't accomplished anything. So this  
4 isn't telling us anything. It is telling us we are going  
5 through the backlog, but that backlog is going to  
6 continue. It is just going to keep coming back in through  
7 another door.

8 I don't know if there is a way to -- Ultimately,  
9 that's what we were asking, and I think that's kind of  
10 what Roger was asking for when he wanted to see a graph.  
11 He wanted to see that it's going down, but we wanted that  
12 downward trend to mean something. And to me from what I'm  
13 hearing from people, it isn't meaning anything. I  
14 understand you are going through the backlog, and it's  
15 gone from 1,043 to 992 and that's great. If it is going  
16 to be recycled and come in another door, then...

17 MR. BEAL: Am I right -- I'm sorry. We're  
18 processing the backlog, but we're not processing the  
19 backlog with different results.

20 CHAIRMAN O'HARA: We haven't a measurement  
21 for that.

22 MR. BEAL: I'm sorry. The question really  
23 isn't the backlog at all but the issues that are being --  
24 the determinations are being made in the manner that  
25 results in a great number of appeals. And I think that's

1    what we maybe are trying to ask, is why are we doing  
2    determinations that are going to be appealed?  What needs  
3    to change there in how the work is being done?  That's  
4    maybe more the question.  Maybe it isn't information and  
5    processing speed.  It's the results of the processing that  
6    we're having trouble understanding because it is the same  
7    as it was before, it is just faster.

8                   CHAIRMAN O'HARA:  It seems like we have good  
9    measurements and benchmarks for determining the quantity  
10   of applications that are being reviewed.  We don't have a  
11   good benchmark for quality of what's reviewed.

12                  MR. BEAL:  "Quality" implies that they're  
13   not right.  But the results of determinations are the  
14   things that -- it is not an effective determination  
15   because they are being appealed.

16                  MS. NAVARRETE:  Excuse me.  But I'm not --  
17   We're not striving to create appeals.  And if I'm not --  
18   if we're not furnished the information on an AN or an  
19   explanation or a rationalization that explains why a  
20   charge is being charged, we cannot by statute just okay  
21   it.  So to ask me -- to sit there and ask me to go around  
22   the law and just give out determinations so that I don't  
23   get appeals, no.  We can work on the process, and I'll  
24   work on it with you.  We can work on it together.  But I  
25   can't just issue determinations without going along with

1 the statute, and I have to have rationalization and proof  
2 of payment.

3 MR. BEAL: Excuse me. I didn't -- if you  
4 got that from what I was saying, I hope --

5 MS. NAVARRETE: I think that's what I --  
6 that's what I heard.

7 MR. BEAL: Okay. I'm glad you brought it  
8 up --

9 MS. NAVARRETE: Thank you.

10 MR. BEAL: -- because that's not what I  
11 intended to say --

12 MS. NAVARRETE: Thank you.

13 MR. BEAL: -- at all. What I intended to  
14 say is we have to look at the problem. If you have  
15 defined why the determinations you are making are being  
16 appealed again, then it is certainly a problem that can be  
17 addressed in the community, if you will.

18 MS. NAVARRETE: Yes. We've addressed it at  
19 the technical subcommittee meetings.

20 MR. BEAL: That's the kind of information we  
21 have to ferret out of the pile of numbers so the job can  
22 get done right and there will be fewer appeals to any  
23 determination.

24 MS. NAVARRETE: We've addressed that at the  
25 technical subcommittee meetings, that all we're asking for

1 is rationalization on some of these things. And instead  
2 of sending out ANs, we have been faxing. We have been  
3 telephoning. And then we get complaints from the  
4 regulated public that we are faxing and telephoning too  
5 much. So I don't know how we can work on this process any  
6 better together. We are bending over backwards. I'm  
7 trying.

8           So if it is a process issue, we can hash it out  
9 in the technical subcommittee meetings. That's what I  
10 asked for in the last technical subcommittee meeting, was  
11 we need the rationalization behind some of these charges.  
12 If you deviated from a work plan, you know, we have the  
13 waiver situation and you can go with that or something.  
14 We just need the rationalization.

15           MR. BEAL: It sounds like a technical  
16 subcommittee issue, how you process.

17           CHAIRMAN O'HARA: If I understand, many of  
18 the recommendations that we made as a Commission and at  
19 the subcommittee level were putting in fixes such as the  
20 determination log. And that's not going to be an  
21 overnight success.

22           MS. NAVARRETE: That's on the Web.

23           CHAIRMAN O'HARA: Part of that is getting  
24 communication. There will be, it seems to me, a little  
25 bit of a time delay between getting these things in place

1 and seeing results.

2 Any comments?

3 MS. DAVIS: Judy, if I need to go to the  
4 technical subcommittee for this, just tell me. A couple  
5 of things. One, if you would just comment on the  
6 processes and procedures that we have put in place, the  
7 technical subcommittee, the bulletin, and how effective --  
8 I mean, in your opinion, do you think those are good tools  
9 to use and the information will get out?

10 And the second thing is about the number of  
11 appeals that occur because of lack of information, lack of  
12 stuff that goes on the application. Are those -- can you  
13 cluster those into particular categories, or is it all  
14 across the board where people don't put the information  
15 in?

16 MS. NAVARRETE: Well, a lot of times the  
17 information is we just need a rationalization for why they  
18 did it a certain way or why they deviated from a plan. As  
19 far as -- I'm sorry. I forgot your first question.

20 MS. DAVIS: The first question really, Judy,  
21 is about tools, the bulletin or the technical  
22 subcommittee. Do you think those are effective tools for  
23 communicating out some of the issues that need to be  
24 communicated between the regulated community and the  
25 agency?



1 MS. NAVARRETE: I think those have been very  
2 effective tools. And I have handed you a -- Policy  
3 Commission got a copy of this. And this is the path to  
4 the bulletin. There is one bulletin on there now. I know  
5 that Hal hasn't -- Hal and I haven't completed the form  
6 that will go on the Net for the regulated community to  
7 contact him with something that they would like on this  
8 bulletin.

9 But it's up, it's running, and that's the path  
10 to get to it. And I think that will help us tremendously  
11 in communication with the regulated public and the  
12 regulated public communicating to us on processes and  
13 procedures and things that have changed or new ways of  
14 doing things. Or maybe I can put out a bulletin asking  
15 for this rationalization across the board. It seemed to  
16 be agreeable to everyone and everyone understood in the  
17 technical subcommittee meeting, and we can revisit that  
18 issue in the next technical subcommittee meeting.

19 I know that some of the members of the technical  
20 subcommittee that were there had offered to -- one of them  
21 offered to make a matrix and another one -- the same  
22 person, I think, is going to bring an example of how  
23 they're going to do their rationalization. And I think it  
24 is a pretty good idea.

25 MR. GILL: I guess the only problem is in

1 the technical subcommittee, the last one, we really only  
2 addressed two issues. And the matrix you mentioned, which  
3 we'll discuss in a few minutes, in a little bit, really  
4 only dealt with continued groundwater sampling and water  
5 level measurements. But when you are talking about  
6 rationale, that's where the term "rationale" came up, was  
7 in that discussion. But the issues that we're seeing come  
8 out in interim determinations are -- cover the entire  
9 gambit of what we're working on and what we're sending in  
10 applications for.

11 MS. NAVARRETE: Are you asking for --

12 MR. GILL: That rationale, so to speak,  
13 doesn't necessarily carry over to every one of them.  
14 There is all kinds of --

15 MS. NAVARRETE: Do you want frequency of  
16 denials on certain issues?

17 MR. GILL: I guess I just don't know how  
18 we're going to -- I mean, I don't want you doing something  
19 that's taking you away from the activities that you need  
20 to be doing, which is working on the applications. And  
21 personally, I just don't really see -- other than just the  
22 numbers that are coming down, that's the only thing to me  
23 that this shows because -- And I agree it may not be --  
24 there may not be a good way to show that we're seeing a  
25 change in determinations, whether more information is

1 being provided and you are getting information or DEQ has  
2 changed their philosophy on a particular issue or  
3 something like that. I don't know if there is a good way  
4 to track that or any way to track that.

5 The huge issue is that I'm being told they are  
6 not seeing any differences. And I understand you're  
7 saying, Well, there is a lot of information we need. But  
8 I have seen some of the requests for information, and I  
9 don't agree with them. And I have heard from -- And  
10 that's just some of them. There is some I have no  
11 problems with.

12 But I'm not seeing a change in philosophy on  
13 some of the things we discussed when we were first talking  
14 with DEQ and when they were first providing their plan for  
15 reducing the backlog. And that was the huge issue. If  
16 there wasn't a philosophy change on some of the  
17 determinations, we are not going to go anywhere. We can  
18 reduce this number, but it is going to come back in the  
19 other door.

20 MS. NAVARRETE: I would need specifics on  
21 those.

22 MR. GILL: Well, I know. And I can come up  
23 with some, but then they could very well be on appeal and  
24 that's where we have been stopped before. We can try to  
25 go over those in the technical subcommittee and we have --

1 we have been. We have been trying to discuss the issues  
2 that are creating the determinations rather than  
3 individual cases.

4 But I guess the frustration I'm hearing is that  
5 we thought we had been doing that and new people were  
6 brought in for review that's moving the process along  
7 faster, but we're seeing pretty much the same problems.  
8 Some new ones have been created. Some have dropped off.  
9 But I think that's, I guess, the point. I don't need to  
10 go any further. That's where the frustration is.

11 And so I know DEQ is going to bring up in their  
12 next point here the frequency of technical subcommittee  
13 meetings, but you can see why we're concerned about  
14 reducing technical subcommittee meetings. There is a lot  
15 to be done. And we are not seeing a huge movement and we  
16 need to determine where that -- where the problem is.

17 MS. NAVARRETE: Right. One of the problems  
18 is in appeal meetings, we are furnished the information  
19 that we would have needed in the first place to approve a  
20 determination. So if you are furnishing information that  
21 we have asked for in an appeal meeting, why just not  
22 furnish it upfront when we ask for it? And then there  
23 would not be a necessity to go to an appeal.

24 MR. GILL: That sounds good on the surface,  
25 but I do know there is many people the issue is they don't

1 believe that they never mentioned -- needed to be supplied  
2 in the first place. That's the problem, is we've got a  
3 complete -- And when you say that the statute says that,  
4 there is many people that believe the statute does not say  
5 that, that you've got to do what you are doing. That's  
6 where the issues are, and we are not going to resolve them  
7 with this obviously.

8           And I don't know that -- it is going to be  
9 something very, very difficult to resolve in individual  
10 subcommittee meetings when none of the information that we  
11 discuss ends up -- apparently does not go out to the  
12 worker bees because we are seeing the exact same things  
13 come through. That's really where the frustration is. We  
14 have discussed this for a long time, and we are not seeing  
15 any differences in things we thought we had reached  
16 consensus on or -- And there is validity to what you are  
17 saying and -- But, as I said, there is just a -- different  
18 people have different thoughts on how things are being  
19 interpreted. That's what we really need to discuss. And  
20 we thought we were, and that's why the frustration is  
21 still there.

22           CHAIRMAN O'HARA: Any others? Theresa.

23           MS. FOSTER: Mr. Chairman, I would like to  
24 voice a different opinion. As an owner-operator, I have  
25 seen a significant improvement in the amount of

1 applications that are being reviewed. Applications that I  
2 sent in a year, year and a half ago are finally -- I'm  
3 finally getting a phone call, and the phone calls are very  
4 beneficial. They said we need information relating to  
5 this or this, Can you provide that? I do it. The issue  
6 is solved. I'm getting a determination letter. So  
7 progress is definitely, definitely being made.

8           If people have concerns about issues and they  
9 have to go to a formal appeal, I would suggest they do  
10 everything they can not to go to a formal appeal, to have  
11 that information that is requested either by fax or phone  
12 sent over to DEQ in a timely manner, go through the  
13 informal appeal process, and get it done so we do not use  
14 up a lot of DEQ's time in the formal appeal.

15           I think this Commission is giving a mixed signal  
16 here, and it is real confusing sitting back. At one time  
17 we said, You are doing a terrible job. You are  
18 backlogged. You need to work on those backlogs. Okay.  
19 They figure out a policy how to get through the backlog.  
20 And now because of the backlog being worked on, there is  
21 all these determination letters and informal and formal  
22 appeals. We should expect it. We should expect it to  
23 rise while they continue with their backlog. So why are  
24 we questioning DEQ now because their numbers are up? That  
25 was expected to go.

1           Maybe what would help with this forum would be,  
2   like, a three-month window so we can see how things have  
3   changed from a technical review, a cost review, and that  
4   type of thing. And maybe what would also help in the Bar  
5   chart that's on the very first page of the internal -- on  
6   the interim determination, what percentage is being  
7   questioned by the owner-operator. Maybe that would be  
8   very beneficial because it is not numbers. It is  
9   percentages, and we need to look at percentages. Thank  
10   you.

11           CHAIRMAN O'HARA: Any other comments,  
12   Commission members?

13           MR. SMITH: Judy, I was really disturbed to  
14   hear a comment you made that you were getting complaints  
15   for going the extra mile of communicating to people. How  
16   do we solve that? Can we get a list of those people? I  
17   mean, that was the whole -- that was the whole part of  
18   getting out in front of this and improving our  
19   relationship with the business community. And now we've  
20   got complaints?

21           MS. NAVARRETE: That's right.

22           MR. SMITH: I think the Commission would be  
23   unanimous in trying to solve this as quickly as possible  
24   with your help. And anybody please correct me if I'm  
25   wrong, but, I mean, communication is great. And I'm

1 really disturbed to hear that you are getting complaints  
2 that you're communicating too much. Comments?

3 MS. NAVARRETE: Yes, we are.

4 MR. SMITH: Comments?

5 MS. NAVARRETE: I am getting complaints. I  
6 won't give you names, but I am getting complaints.

7 MR. SMITH: How many? I mean, are we  
8 talking about one or two? Are we talking about a dozen?  
9 Are we talking about a hundred?

10 MS. NAVARRETE: We are talking about they  
11 think we're -- our process hasn't changed, that we are  
12 asking too many questions, that we should just be able to  
13 go ahead and look at the information and process the  
14 claim.

15 MR. SMITH: Are they in the single digits,  
16 dozens, triple digits, complaints? Owner-operators, only  
17 consultants?

18 MS. NAVARRETE: It is in the single digits.  
19 But some people communicate and they say they are speaking  
20 for the regulated public. So you can take that at face  
21 value, or you can take it as a complaint or whatever. But  
22 sometimes I get a call that it's -- that they are speaking  
23 for more than one person.

24 MS. LEWIS: Judy, what's the percentage of  
25 complaints, the percentage in relationship to your total



1 population? If you've got X in, what's the percentage you  
2 are getting complaints on?

3 MS. NAVARRETE: Complaints on asking for  
4 more information?

5 MS. LEWIS: Is it 1 percent, 10?

6 MS. NAVARRETE: I would say it is less than  
7 5 percent.

8 MS. LEWIS: That's livable.

9 MS. NAVARRETE: But it's -- some of them are  
10 more vocal and some of them have a lot of applications in  
11 at ADEQ.

12 CHAIRMAN O'HARA: Bob.

13 MR. ROCHA: Bob Rocha with ADEQ. I just  
14 want to make a general comment. I think we have been,  
15 ADEQ -- And believe me, I'm speaking for myself and the  
16 people that are working on this process. We have been  
17 really, really working hard. And it is very frustrating  
18 to hear that we are not moving forward when I know we  
19 have. I mean, if -- We need to continue this dialogue.  
20 You need to come to us and tell us what is bothering you.

21 You know, it's a two-way street. If we don't  
22 know what is the issue, we cannot deal with it. And we've  
23 been trying very hard, and the people have been trying and  
24 working very hard. I can tell you that. I mean -- And  
25 we've set up a process that has addressed when we came and

1 we asked you guys, the Commission, what was your priority;  
2 and we have been working on that.

3 I ask you again, let's continue to work forward,  
4 move forward and work together. We need this dialogue.  
5 We cannot go down the same path that we were going down  
6 saying we cannot resolve this issue. I hear you. Maybe  
7 it is an education problem that we need to get back to the  
8 applicant and say, Can we have a class? You lead the  
9 case. We'll lead the class. We'll put it on together and  
10 say here's what you need, here's what you need to support  
11 so that we do not go into the appeal land. But as pointed  
12 out before, things that have come prior to a certain date  
13 may wind up in the appeal land.

14 And yes, we can do a different reporting. We  
15 can try to give you additional information. But we want  
16 to use our resources as best as we can to provide the  
17 information that's needed and to move this program forward  
18 and not continue with a process that you feel is not  
19 effective.

20 And hopefully, I have heard a couple of you that  
21 say it is effective and that we are moving in the right  
22 direction. And I believe that that's what we've heard  
23 from a lot of the stakeholders out there. I also don't  
24 have the day-to-day activity that some of you do have.  
25 But we just need to hear from those individuals that

1     you're hearing from saying, This is my problem.

2                     And the fact that an issue comes up again and  
3     again and again, maybe that's something that if you  
4     provided it once, the next time when you get called, it  
5     should be kind of routine and it should not go to appeal  
6     because the next time you know what information is needed.  
7     So it is an education problem that we -- that I feel we  
8     need to ensure that we're educated and that we educate the  
9     community as to what we need to do a better job. So I,  
10    again, am asking you for your help in this positive action  
11    that we've taken so far and continue. Thank you.

12                    CHAIRMAN O'HARA: Any other comments from  
13    members of the Commission at this time? Roger.

14                    MR. BEAL: I'm not sure, but my thought  
15    right now would be that the process is working better than  
16    before but maybe the determinations are no different than  
17    they would have been before because the thinking is the  
18    same. And I'm gathering that -- I'm going to say  
19    consultants rather than owner-operators, because they are  
20    the ones we turn to for the technical expertise to submit  
21    the information and ask the questions, are not  
22    understanding the determinations giving -- or asking for  
23    more information. They don't understand why they're being  
24    asked for more information or disagree with that, so we  
25    end up with the same number of appeals.

1           So kind of circling the issue, I don't know what  
2   you define it. But it seems as if we're still at  
3   loggerheads with consultants presenting material in a way  
4   that's unsatisfactory to ADEQ. And until there's a  
5   meeting of the minds there to what's adequate and when can  
6   you get by with what's been given and when can the  
7   consultant say, All right, I'll resubmit the information,  
8   we may continue with the appealable determinations.

9           You have a pretty good audience. I mean, you  
10   could almost ask people here if you think the information  
11   that has been submitted is adequate or you agree with the  
12   appeals, you can raise your hand. And even ADEQ could get  
13   an idea of how satisfied those consultants that are here  
14   are with the determinations being made. It is a tough  
15   issue. I don't know how to discuss it even.

16           CHAIRMAN O'HARA: It seems to me sometimes  
17   despite all the best efforts and all the meetings in the  
18   world, you are still going to come down to some decisions  
19   that you don't reach consensus on. There is ultimately  
20   disagreement between those who want to get the money and  
21   the ones that are paying it. It is those issues that you  
22   just don't reach consensus on, that maybe if they can  
23   identify it, if they can't reach consensus, bring it  
24   forward either to ADEQ management or the Policy Commission  
25   and we can make some recommendation. There is ultimately

1 going to be some disagreements you are never going to get  
2 consensus on.

3 MR. BEAL: Maybe there is some value in  
4 looking at the types of appeals that could be discussed  
5 here.

6 CHAIRMAN O'HARA: We can identify those big  
7 issues that are causing the majority of the appeals and  
8 focus our time and understand what the ultimate problem  
9 is.

10 Any other comments from members of the  
11 Commission?

12 Let me open it up to members of the public.  
13 Would anyone like to make a comment on this issue?  
14 Mr. Pearce.

15 MR. PEARCE: Thanks. John Pearce. Can I  
16 ask a few questions first? I want to make sure I  
17 understand these numbers correctly because I don't want to  
18 get the wrong information from looking at this matrix.  
19 The total number of active applications, 992, that's the  
20 total number of direct pays and pre-approvals and  
21 reimbursement requests? The 992 number, total number of  
22 active applications, is that the total number of direct  
23 pays, pre-approvals, and reimbursements --

24 MS. NAVARRETE: Mm-hmm.

25 MR. PEARCE: -- on file with the Department?

1 MS. NAVARRETE: Yes.

2 MR. PEARCE: Okay. And then last month,  
3 there was 115 interim determinations issued?

4 MS. NAVARRETE: Yes.

5 MR. PEARCE: Okay. And then there was 36  
6 received.

7 MS. NAVARRETE: Mm-hmm.

8 MR. PEARCE: So we netted a positive -- we  
9 gained ground on 80 approximately last month, right?

10 MS. NAVARRETE: Right.

11 MR. PEARCE: Which is actually consistent or  
12 nearly so with what you accomplished in November. So  
13 that's a trend in the right direction. Am I correct, it  
14 is 80 that we gained ground on net?

15 MS. NAVARRETE: Right.

16 MR. PEARCE: Do we have any statistics on  
17 number of informal appeals?

18 MS. NAVARRETE: Not yet.

19 MR. PEARCE: Did I hear correctly that  
20 that's going up with the number of claims that are  
21 processed, or is that just speculation?

22 MS. NAVARRETE: It is -- it may be going up  
23 with the number of claims processed, but most of the  
24 appeals right now are for not making the 90-day  
25 determination.

1 MR. PEARCE: Right. Those appeals on  
2 failure to make a determination within 90 or 120 days,  
3 those aren't included in the 992, are they? That's a  
4 separate statistic, correct? The 992 applications -- an  
5 application isn't an informal appeal to the Department  
6 about a failure to process a claim.

7 MS. NAVARRETE: Those are in there. Those  
8 are the ones that you are appealing.

9 MS. ROSIE: They are not counted separately.

10 MR. PEARCE: They are not counted twice?

11 MS. NAVARRETE: No, no.

12 MR. PEARCE: I wanted to make sure about  
13 that.

14 Am I hearing that it is a problem for the  
15 Department when you receive these -- I want to know this  
16 because certainly I have submitted or helped submit my  
17 share of these 90-day or 120-day failure to respond  
18 notifications to the Department. Does that burden the  
19 Department in some way because I want to know what you  
20 feel the burden is.

21 MS. NAVARRETE: It burdens the Department in  
22 we are trying to get those out so that we don't have to  
23 deal with an appeal. And what that does is put the ones  
24 that are -- or it has been, they are too numerous to do  
25 this with now, but it had been in the past put those at

1 the front so that we would not have to deal with an  
2 appeal, which would cost us more time.

3 The 90-day -- the ones that are being appealed  
4 for the 90 days right now are becoming too numerous. We  
5 are trying to get to the reimbursements that have been in  
6 there over a year. And so we are just going to have to --  
7 it is just something we are going to have to deal with.  
8 It takes administrative tracking. It takes all kinds of  
9 time away from us so -- but it is the regulated public's  
10 right to appeal.

11 MR. PEARCE: Now, one thing I wanted to  
12 raise, has it ever been discussed in this forum that the  
13 Department's determined that the failure of the Department  
14 to respond within 90 days or 120 days gives us the right  
15 to an informal appeal but if the Department doesn't  
16 respond after that, then there is no right to a formal  
17 appeal? Are you aware of that?

18 MS. NAVARRETE: That's a legal opinion,  
19 John.

20 MR. PEARCE: I guess my question is -- These  
21 are time frames that are in statute for the Department's  
22 failure to respond to a submittal. And my question is:  
23 What's the recourse if the Department doesn't, if there is  
24 no right to a formal appeal to OAH?

25 CHAIRMAN O'HARA: John, do you mind



1 discussing that with her? Do you guys want to talk about  
2 that specifically at a break?

3 MS. NAVARRETE: Thank you.

4 CHAIRMAN O'HARA: It seems like kind of  
5 complicated for our purposes.

6 MR. PEARCE: Actually, what it is, not to  
7 beat the issue to death, but for approximately three years  
8 the Department has processed matters where an informal  
9 appeal does not generate a determination on a submittal  
10 within the time frame provided in the informal appeal  
11 process. The Department has allowed such matters to be  
12 brought up to the attention of the Office of  
13 Administrative Hearings for processing. And then at that  
14 point, something happens, the Office of Administrative  
15 hearings says give them their decision or the Department  
16 issues a determination or something.

17 Recently, the Attorney General's Office has  
18 taken an interpretation, which is a policy by statute,  
19 that there is no right to go to a formal appeal under the  
20 Department's failure to render a determination within the  
21 informal appeal process. My point is: Has this been made  
22 known to the public before now as something that the  
23 Department feels is the proper interpretation, which as  
24 you know is within the statutory definition of a  
25 substantive policy statement?

1 MS. HUDDLESTON: Excuse me, Mr. Chairman.  
2 This is an improper topic for this situation. This issue  
3 is on appeal, and Mr. Pearce should not be allowed to  
4 cross-examine Department personnel in this hearing -- in  
5 this meeting.

6 CHAIRMAN O'HARA: Okay. And I just -- It  
7 may be a little bit off topic too. If there is a policy  
8 that we need to look at, I would certainly entertain  
9 looking at the policy applicable generally, at a future  
10 meeting getting that on the agenda.

11 MR. PEARCE: I think one thing we have to  
12 decide here is when the Department interprets a statute in  
13 a certain way, are we not in agreement that that  
14 constitutes a policy that should be brought to the  
15 attention of the Policy Commission? Just because it is in  
16 litigation and because it is being challenged, is that  
17 somehow out of the scope of this body?

18 CHAIRMAN O'HARA: It is probably off topic,  
19 though, as far as our agenda.

20 MR. PEARCE: I certainly don't want to see  
21 this Policy Commission be limited in what it can look at  
22 and discuss by way of policies. And the statute defines a  
23 policy includes by definition an interpretation by the  
24 Department of a statute. Isn't that something that should  
25 be brought up in this forum, or are we going to disqualify

1 those topics from discussion in this forum because they  
2 are in litigation? I mean, that's greatly what's going on  
3 out there in the context of the regulation of claims and  
4 work claims.

5 MR. O'HARA: My only point, John, is it may  
6 be a valid policy and certainly something we can look at.  
7 And it is not on the agenda today. I've got to control  
8 the conversation and comments to keeping to what the  
9 agenda says so we don't stray off topic.

10 MR. PEARCE: Should I bring it up at the  
11 end? How do we get it on the agenda?

12 CHAIRMAN O'HARA: You certainly can bring  
13 the issue up in public comment. We discuss it amongst the  
14 members and see if we want to put it on a future agenda.  
15 It is not on this topic. This topic is dealing with  
16 SAF --

17 MR. PEARCE: I understand. I'm not here to  
18 cause trouble, but I will suggest this. As soon as the  
19 Department interprets a statute and changes the way it  
20 processes things, that's a policy statement. And rather  
21 than have it brought up and dealt with in litigation after  
22 litigation, it would behoove, I think, everybody if it  
23 were brought up promptly in this forum so that people know  
24 that's what's happening.

25 I can give you another example. I hear that we

1 are going to hear something later on today possibly about  
2 another interpretation the Department has made about  
3 insurance. I don't know if we are going to hear about  
4 that today or not. That was --

5 CHAIRMAN O'HARA: Similarly, though, that's  
6 not on the agenda and we can't discuss that either. I  
7 fully expect to have that on next month's agenda.

8 MR. PEARCE: Let me strongly submit  
9 something because I know that there are some people like  
10 myself that are concerned about this. When the Department  
11 is reinterpreting statute, in this case, the statute has  
12 been on the book for six years, in a way that is  
13 extremely, extremely important, that is a policy. And why  
14 is this Policy Commission not advised of those  
15 reinterpretations promptly until after it is in  
16 litigation?

17 Then when we do bring it up, we can't talk about  
18 it because it is in litigation. That doesn't make any  
19 sense to me. So I guess we'll have to wait on that  
20 because that's not on the agenda. How are we going to get  
21 it on the agenda when we don't know what the Department is  
22 doing? Shouldn't the Department be the one to put it on  
23 the agenda in the first place? That's my point.

24 Back to my earlier point, which, I guess, is  
25 within the scope of what we are talking about now, I have

1 heard some comments, some suggestions really, that we  
2 bring to DEQ's attention what it is that some of the  
3 regulated community seems to be concerned about. I'm not  
4 speaking for the regulated community. I am speaking on  
5 behalf of some of my clients that are entangled in some of  
6 these things.

7           It seems the problem is there is a perception  
8 that the Department wants a certain level of rationale in  
9 order to support a claim from the applicant. In other  
10 words, it is really unclear to me in advising clients, and  
11 I think it is unclear to some clients, just how much  
12 information to provide in support of a claim in order to  
13 get that claim approved. Does the Department want a  
14 recitation of the technical elements of the site  
15 characterization report in order to approve a certain form  
16 of corrective action that they may follow and be the  
17 subject of a claim, or is a less detailed justification  
18 acceptable? I think it is unclear how much information  
19 the Department wants.

20           I think that's fluctuated over the years. I  
21 frankly don't -- I haven't seen much difference in the  
22 nature of the claims that have been submitted, the work  
23 plans that have been submitted over the years; and, yet,  
24 we've seen an increase in denials. So it occurs to me  
25 having practiced in this area for 14 years that the

1 process at DEQ has changed in how it's reviewing claims.  
2 The information it's getting hasn't changed much. It is  
3 the same cast of characters submitting the claims, but the  
4 denials have increased dramatically.

5 So I think unless we get to that point and  
6 figure out and come to a meeting of the minds, as Mr. Beal  
7 suggested, about what is expected to get a claim approved,  
8 we are not going to make much progress on the number of  
9 appeals even if we do more quickly process the number of  
10 claims that are being submitted.

11 I know one example is 1054(c). There was a  
12 process that everyone felt comfortable with that was  
13 approved by the Department, provided in a demonstration  
14 made to the Policy Commission some time ago about how line  
15 item substitutions, letter substitutions, were going to be  
16 performed by the Department. There was legislation that  
17 was passed last year that detailed this. There was  
18 letters from the Department explaining how it was going to  
19 work.

20 Still, people are experiencing problems with  
21 this, and I don't understand why. It seems the Department  
22 is still requiring more information than what people felt  
23 would possibly be required in order to get these things --  
24 these costs approved under a pre-approval. I don't know  
25 why that's happening, but that's happening.

1           Finally, I would like to see some effort made to  
2 track informal appeals because I think that's important.  
3 A lot of time is being spent, as Ms. Foster indicated, on  
4 these informal and formal appeals. The rooms are filled  
5 with people both from the Department and from the  
6 appellant side. A lot of time is being spent in these  
7 meetings. If we can take a look at how that's trending  
8 one way or another, I think that is important for all.

9           Thank you for putting up with my comments, and  
10 perhaps we can talk about it again some time when some of  
11 these things are on the agenda.

12           CHAIRMAN O'HARA: Thank you. Any other  
13 comments from members of the public? Please, I am just  
14 going to request that we keep the comments to at least  
15 three minutes.

16           MR. KENNEDY: No problem. John Kennedy, for  
17 the record. Since my -- I have been, I think, commented  
18 on three times by Judy without my name being used, I  
19 figure I'd say what we're doing.

20           I think, Theresa, what you were saying, the  
21 faxes and calls have increased. But I think where I have  
22 called back, the issue has been on the quality of the call  
23 and that my people are going through and spending time  
24 looking at things that have been submitted that I have  
25 been able to get back with Judy and other members of her

1 staff and say, This is what you are calling and asking  
2 about. I have already got this in there. Can you please  
3 check and make sure I understand what the question is?

4 And so I think just the general comment that we  
5 are not wanting -- I'm calling and saying, Don't call me  
6 if you've got it. If it is a legitimate call, please  
7 check because I've got my staff coming to me saying -- and  
8 I was going to bring this up before she did. They are  
9 coming to me saying, We are spending time on what we've  
10 already submitted. So the communication is good, but I  
11 think the level of check of that call before it happens --  
12 because I can't bill that to my client. I can't bill that  
13 to anyone. It is a cost I have got to absorb.

14 I think the issue here is on communications  
15 completely, and without getting into specifics because  
16 they are on appeal, I have seen it. There is no guidance  
17 document for SAF preparation, so the regulated community  
18 is kind of out there doing it. You go through processes  
19 to come up with what the information issue is, and I was  
20 just talking to Judy this morning.

21 It is very clear when you get there. But  
22 unfortunately, we seem to be getting to the specific  
23 request when you are in front of an ALJ rather than at the  
24 informal appeal. You get a denial that says an FOI, not  
25 enough information, for 25 line items. There is no



1 specific reason of why it is denied, and it takes a lot of  
2 effort to try to get that. I think what we need to do is  
3 to try to somehow get together. And this is, I think,  
4 towards what you are talking about, Roger, to eliminate  
5 these things. We need to get specific denials.

6 If you are going to deny Lines 1, 2, 3, 4, and  
7 5, here's why so then you can -- or at the AN process, the  
8 same thing, be able to get the information and communicate  
9 it rather than getting it into the OAH process where you  
10 finally sit down and the ALJ says, You will give them the  
11 information. And then you sit there and get it done. It  
12 is just moving the process way the wrong direction, and it  
13 needs to be on the front end. When DEQ denies something,  
14 they need to specifically say why it is denied, not just a  
15 general it is 1005(e)(3), you didn't meet it. You can't  
16 answer that question.

17 MR. GILL: We would like to see a rationale  
18 as well.

19 CHAIRMAN O'HARA: Patricia Nowack.

20 MS. NOWACK: Thank you, Mr. Chairman and  
21 members of the Commission. For the record, my name is  
22 Patricia Nowack. I would like the Department to give a  
23 couple clarification issues. The number of active  
24 applications, is that applications that haven't had an AN  
25 letter? Are the applications with an AN letter

1 outstanding not included in this list of active  
2 applications?

3 MS. NAVARRETE: What?

4 MS. NOWACK: What is an active application?  
5 Is it an application without waiting for information  
6 from --

7 MS. NAVARRETE: No, that we haven't made a  
8 determination on.

9 MS. NOWACK: Okay. And then the second  
10 question is: Number of determination letters issued, is  
11 that on 115 applications or is that counting multiple  
12 releases, actual letters?

13 MS. NAVARRETE: That's actual letters.

14 MS. NOWACK: Okay. So if I had a site --

15 MS. NAVARRETE: Wait a minute.

16 Applications.

17 MS. NOWACK: You're sure?

18 MS. NAVARRETE: A packet of applications,  
19 yeah, applications. It is not the letters.

20 MS. NOWACK: I just think you should verify  
21 that. I got 11 letters last week, but it was only on  
22 three applications. So this is very misleading if it is  
23 actual letters instead of applications if you are talking  
24 about number of letters issued and you are talking about  
25 multiple releases. Would you just check on that? Thank

1     you.

2                   CHAIRMAN O'HARA:   Any other comments from  
3     the public?

4                   MR. PEARCE:   I didn't understand what -- I  
5     thought -- I think we got -- I may have misunderstood. I  
6     think I got two different answers to the question. I'm  
7     sure I misunderstood. Nine hundred ninety-two is the  
8     total number of active applications. I thought that was  
9     the sum total of all applications that were submitted to  
10    the Department.

11                  MS. NAVARRETE:   That's right.

12                  MR. PEARCE:   But I think I failed to ask:  
13    But those are applications where there has been no  
14    determination made by the Department? Okay. Does an AN  
15    request constitute a determination?

16                  MS. NAVARRETE:   No.

17                  MR. PEARCE:   This 992 includes ones where  
18    there has been an AN request made by the Department?

19                  MS. NAVARRETE:   Yes.

20                  MR. PEARCE:   That's not an additional number  
21    of things that are out there. That's 992 and that's out  
22    there. And then you've got the number where you have made  
23    the determinations on. And those are taken off of the  
24    list of 992 as soon as you make a determination.

25                  MS. NAVARRETE:   Right.

1 MR. PEARCE: Okay. Thanks.

2 CHAIRMAN O'HARA: Any other comments on this  
3 issue? Dan Kelley.

4 MR. KELLEY: My name is Dan Kelley, for the  
5 record. Thank you, Mr. Chairman. As one of the most  
6 ardent, vocal, and continuous critics of the SAF program,  
7 I think it is definitely my responsibility to make the  
8 statement the program has drastically improved in the last  
9 six months. There has been a significant improvement just  
10 in the last six months. And that's definitely the work of  
11 these people sitting right here in front of me. And I am  
12 very thankful for that.

13 Now the "however." Yeah, there is a lot of work  
14 to be done. But to allay Mr. O'Hara's concerns and Ms.  
15 Davis's concerns, I see the decision log, whatever we call  
16 it now, bulletin board, SAF bulletin as that mechanism  
17 which will facilitate the resolution of many of these  
18 issues. The number one thing that's tee'd up right now is  
19 groundwater monitoring because there is a big difference  
20 of opinion between the Department and the regulated  
21 community. That's the number one issue that's tee'd up.  
22 When this issue is resolved, many of these people will go  
23 away. So the point is there is a lot of work to be done.  
24 The Department is working with us. I am seeing  
25 improvement.

1 I ask the Department to please not step away  
2 from the table, sit at the table. Mr. Rocha is saying he  
3 wants to hear dialogue. Let's speak. We will always be  
4 speaking to you. I definitely for one see a change and  
5 appreciate the effort of the Department.

6 There is one thing that I'm hearing in all of  
7 this. And, Judy, if you want one recommendation to reduce  
8 the number of informal appeals that you are getting, I  
9 would ask this: Before your staff issues a determination  
10 that says "no report of work on file" and denies the costs  
11 for that, there needs to be a fax, a letter, a  
12 teleconference note in your file saying, I called this  
13 applicant and asked them, Do you have a report of work on  
14 file? Because I am so tired of getting denial after  
15 denial "no report of work on file" and the report has been  
16 there for 18 months. That's just a communications issue.  
17 It is so easy to remove, so easy to remove the appeals if  
18 you can just deal with that one thing.

19 But that being said, you guys are making great  
20 progress. Thank you.

21 CHAIRMAN O'HARA: Thank you.

22 MR. VANNAIS: Leon Vannais, for the record.  
23 I would just like to address something. Working for Dan,  
24 Tierra Dynamics, and being within the State Assurance Fund  
25 process and working with the Department since 1998, I,

1 too, recognize that the level of rationale that's being  
2 required by the Department at this point to process claims  
3 is a drastic deviation to what has occurred in the past,  
4 not just within the DEQ CRU unit that was developed.  
5 You've also got to look at the work that Peterson did, the  
6 subcontractor work they did prior to 1998.

7           The statutes haven't changed significantly to  
8 require something more excessive or less excessive than  
9 what has been required throughout the years. Many of us  
10 on the outside that are preparing these claims and trying  
11 to support the documentation or support those claims to  
12 the Department so the payment is made available, we are  
13 willing to do that. The problem is, is to what level?  
14 This is mirroring what Mr. Pearce has said.

15           As far as -- Because I may be somebody who had  
16 complained once or twice about the request of information  
17 received by the Department. But I think it has more to do  
18 with the requests that are coming through may not make a  
19 whole lot of sense sometimes. Somebody who actually does  
20 this for a living and understands there is a technical  
21 aspect as well as the financial aspect realizes -- And I  
22 will give an example. This is not under an appeal issue.

23           There was a claim put in for 78 feet of boring.  
24 The technical reviewer added up all the boring logs in the  
25 report and determined there was 76.62 feet. And I got a

1 request for information requesting to explain the  
2 difference of that 1.32 feet. Well, being from the real  
3 world, we know that drillers do not bill 1/100 of a foot.  
4 And it would be nice, if somebody has a question like  
5 that, to go to somebody who's got technical expertise in  
6 the Department to say is this a reasonable thing to ask --

7 MS. PASHKOWSKI: My client just advised me  
8 that Mr. Vannais is talking about a matter that's on  
9 appeal, and those discussions are not appropriate. We've  
10 got members from the technical appeals panel here. It is  
11 just not appropriate to be talking about case-specific  
12 matters that are on appeal.

13 MR. VANNAIS: I wasn't aware it was actually  
14 under appeal.

15 CHAIRMAN O'HARA: Okay. Any other comments  
16 from members of the public on this issue? Thank you very  
17 much.

18 Moving on to Item B, frequency of technical  
19 subcommittee meetings. Ron Kern.

20 MR. KERN: I'm Ron Kern with DEQ. And Hal  
21 Gill provided a bit of an intro to the topic. But there  
22 was a discussion and proposal at the January 9th technical  
23 subcommittee meeting to add another standing meeting to  
24 the technical subcommittee list of meetings so there would  
25 be two -- essentially starting in February, there would be

1 two technical subcommittee meetings each month basically  
2 to address issues including the release reporting of  
3 corrective action guidance, the parking lot issues that  
4 were associated with that guidance when that guidance was  
5 developed with stakeholders and DEQ.

6 And although DEQ recognizes there may be several  
7 significant issues out there, we also recognize that this  
8 may be a bit excessive in terms of numbers of meetings  
9 that the stakeholders and DEQ have to show up to. In  
10 light of the fact there was a legislative session going on  
11 now, we are making -- we have shifted resources to work on  
12 backlogs, not to mention our day-in, day-out need to run  
13 the programs that we run. So we would actually try to  
14 urge a little bit of moderation. Again, we do recognize  
15 that there is probably -- there are significant issues out  
16 there, but I think we really have to work on those with a  
17 limited number of meetings to address and prioritize  
18 issues.

19 CHAIRMAN O'HARA: Is there an appropriate  
20 level you feel -- Is once a month appropriate?

21 MR. KERN: I think that the agency sits with  
22 the once a month for technical subcommittee meetings,  
23 potential for once a month financial subcommittee  
24 meetings, and certainly the monthly Policy Commission  
25 meetings. So there's three forums already that we're



1 working with.

2 CHAIRMAN O'HARA: Speaking from the  
3 financial subcommittee, I know that we only meet when  
4 there is an issue that's been delegated to us. I  
5 understood that to be the technical subcommittee's role.  
6 But I think there was so many issues, it became easier to  
7 facilitate that once a month and a way to delegate it.

8 Hal, do you have any comments on the frequency?

9 MR. GILL: The only thing I can say is that  
10 the reason it was proposed is because we've got -- I've  
11 got two pages, one that DEQ and I passed back and forth on  
12 parking lot issues. I have another handwritten page that  
13 I just found yesterday. There is dozens of issues. And  
14 then on top of that, February is when we're supposed to  
15 revisit the guidance document. Many -- and there are many  
16 issues within the guidance document that come right out of  
17 the rule that need to be addressed.

18 I understand there is legislation going on.  
19 Many of us are in meetings as well having to do with that.  
20 We don't get paid anything for these meetings, and they  
21 are very time consuming. But if we do this, one to two  
22 issues a month, which is what's going to come out, because  
23 there is a lot of discussion, if that's going to occur,  
24 then your appeals will continue because that's where the  
25 appeals are coming from. These issues are the appeal. If

1 we don't address them and get them off the table, nothing  
2 is going to change as far as appeals because that's where  
3 they are coming from. We've got to get consensus.

4 When we recommended another meeting, we said --  
5 I understand in February and March and April, however long  
6 it goes, we have these issues with the legislation and  
7 that kind of stuff. We'd look at it and see if anyone can  
8 make these meetings from the Department. And if  
9 absolutely no one can be there, then we can reschedule it  
10 to another day. But we need to schedule more meetings  
11 because we have to take care of these issues. I don't  
12 know what more I can say. It is obvious to me that we  
13 cannot deal with one to two issues a month.

14 CHAIRMAN O'HARA: Is there any way you can  
15 think of to make the meetings more efficient because you  
16 are saying you are only getting two issues done in a  
17 three-hour period. Is there a way from an order  
18 standpoint to limit comment?

19 MR. GILL: Some of them are probably going  
20 to go quicker. Last time, like I said, the issues we were  
21 working on -- and we discussed it afterwards, Ron and I,  
22 we thought the meeting moved fairly well. Sometimes we do  
23 get bogged down in a lot of discussion. I have kind of  
24 put my foot down in this meeting, and we've got to move  
25 forward because we've got so much to do. We are trying to

1 move the meetings forward with a lot more -- we are trying  
2 to do a better job, and I think we did a better job.

3 Some of the issues are not going to be all that  
4 long. This was an extremely important meeting and more  
5 work is being done to make it work. But there was a lot  
6 of discussion about how to make these issues work. And  
7 these are issues that have always been there, but we are  
8 coming up with new -- in this particular issue, a new way  
9 to handle the program. It just isn't a consensus reached  
10 that, Yeah, we agree this is the case and move forward.  
11 This is a little bit different.

12 Some of them are going to move a lot quicker,  
13 but there is always going to be a lot of discussion.

14 MR. O'HARA: Would it be helpful if the  
15 stakeholders and subcommittee members that are not part of  
16 DEQ met and came up with a position and had DEQ in the  
17 second half of the meeting present a solid case instead of  
18 everyone being there to hear hashing out of the issues?

19 MR. GILL: The stakeholders already come  
20 there with the way that we have been doing it, the way we  
21 think it should be done. And then we discuss it with DEQ,  
22 and we reach a consensus on what's the best for both.

23 Other than trying to move through the issues as  
24 rapidly as possible and meeting consensus, I try to  
25 control the discussion to where it is just on point. If I

1 see it is not going anywhere on a particular point, then  
2 we'll stop and move on to the next one. But the point is  
3 we are trying to reach consensus on how to do the work in  
4 the field. And there's just -- like I said, when we were  
5 going through the guidance document, which is the guidance  
6 for the entire program, we identify more than a page of  
7 parking lot issues which we needed a lot of time to look  
8 at. That's what we're basically trying to do.

9 CHAIRMAN O'HARA: Ron.

10 MR. KERN: DEQ is not going to minimize the  
11 issues and numbers of issues. We recognize they have a  
12 prioritized significance to them. But basically we are  
13 trying to address things as well as we can. We are trying  
14 to work with the technical subcommittee. If we add  
15 another technical subcommittee meeting each month, that  
16 stretches our already thin resources really that much more  
17 because it takes us time to respond appropriately to the  
18 issues that are addressed there and to make sure we are  
19 doing appropriate research to address these promptly and  
20 reasonably within the technical subcommittee meetings.

21 So, again, we're not minimizing the numbers and  
22 significance of these issues. But we would ask that we  
23 keep it down to a dull roar in numbers of meetings because  
24 we can only address so much during any one meeting, and to  
25 add another meeting to it is going to potentially break

1 us.

2 I mean, basically, there are already requests  
3 out there from the Policy Commission, some of which are  
4 going to be coming up here later in the meeting. And we  
5 are working diligently to get those and we are trying to  
6 get those done, and they're top priority. So, I mean,  
7 issues can come up, but we may not have the resources to  
8 respond appropriately in time.

9 CHAIRMAN O'HARA: Any comments from members  
10 of the Commission?

11 I want to move on to Item C, release reporting  
12 and corrective action guidance. Joe Drosendahl has a  
13 presentation.

14 MR. DROSENDAHL: My name is Joe Drosendahl.  
15 I work for the underground storage tank section part-time  
16 and then for the SAF section the other part-time. So I'm  
17 kind of schizophrenic right now. Well, maybe before, too,  
18 who knows.

19 But this kind of ties into our discussion that  
20 we just had. And as Hal said, that originally we were  
21 going to be bringing up the guidance document that was  
22 effective last August. As Ron Kern just said, our  
23 resources right now are very limited. So, internally, we  
24 talked. And for the existing guidance, and this doesn't  
25 include the parking lot issues or any bulletin board

1 issues, but for the existing guidance that we kind of --  
2 our proposed schedule is that for February and March  
3 anybody that has comments on the existing guidance, please  
4 submit those to the agency. We'll look at those, come up  
5 with any kind of a revision and submit a revised document  
6 in June of this year. And then we can have meetings  
7 accordingly with the technical subcommittee and,  
8 hopefully, have the revised document out in August.

9 For those burning issues in the existing  
10 guidance that can't wait that long, we can handle those  
11 through, like, the bulletin board process. So if there's  
12 any real burning issues of the existing guidance that  
13 stakeholders have, please bring those to attention that we  
14 need to deal with this now, and DEQ can do that  
15 accordingly.

16 But for the general guidance as a whole, going  
17 back with fixing typos and just cleaning up the language,  
18 that's a very time-intensive project. And with me  
19 being -- working in two sections right now and me being  
20 one of the main people involved in the guidance, we are  
21 kind of proposing that we kind of get a revised document  
22 out in June and then let the public look at it and we can  
23 go from there.

24 CHAIRMAN O'HARA: Thank you. Any comments?

25 Thank you, Joe.

1           Moving on to Item D, development of cycle time  
2 reports. Presentation by Phil McNeely.

3           MR. McNEELY: For the record, I'm Phil  
4 McNeely. I work for the waste programs division, ADEQ. I  
5 was asked by Shannon to evaluate the whole UST program,  
6 and Rick Tobin, the director a few months ago. And the  
7 first phase was to work with the SAF and develop a backlog  
8 reduction plan, which we have.

9           And one thing I would like to say is that's a  
10 work in progress, and we are going to continue to work  
11 processes as we go along. We'll evaluate the appeals and  
12 make required adjustments to improve the process.

13           So I appreciate, Dan, you appreciating what  
14 we've done. We have done a lot of work in that process.  
15 It takes time to actually see the benefits of some of the  
16 work, so I think we'll continue to keep improving.

17           The second phase is working with the corrective  
18 action section. The first thing we have been doing is  
19 developing the database so that we actually can report  
20 what we are doing in that section. There has been a lot  
21 of questions like, What are you guys spending your time  
22 on? So we have go gone through -- We had -- we thought  
23 the database was suspect. A lot of the files we didn't  
24 really think reflected what was in the database. So we  
25 spent the last couple months going through files, seeing

1 what's actually in the files and compare it to the  
2 database. We are feeling a little more confident with the  
3 database. We developed some reports.

4 What we are going to try to do is report on a  
5 monthly basis how many site characterization reports we  
6 review, how many CAPs, how much closure requests, how many  
7 work plans. And then what we would like to do, and this  
8 will help us with our -- get our database fixed and our  
9 files matched up with the database, is give you a list of  
10 what is on tap to be reviewed, how many reports have not  
11 been reviewed. And there will be a minimal amount in each  
12 category. And then the stakeholders can look and say, I  
13 have a report that's not on that list that's not reviewed,  
14 and then we will know to go look at that file and match it  
15 up with the database. So that's the next process.

16 We are going to continue with consistency. I  
17 think with the SAF process, everything goes through Joe  
18 and Chris and Mike. If you just get to the appeals, at  
19 least they should be consistently disagreed with. And it  
20 should be a lot more consistent, and that's easier to fix  
21 than inconsistency.

22 We are going to work with the corrective action  
23 section to work on that and make sure our decisions or the  
24 Commission's are consistent, and we are going to keep  
25 going down that path. So in the next month or two, you'll



1 probably -- Shannon will probably start presenting reports  
2 on our productivity and what we are reviewing and what our  
3 backlogs are.

4 CHAIRMAN O'HARA: Great. Thank you. Any  
5 questions or comments for Phil?

6 Thank you, Phil.

7 At this time, I would like to have a general  
8 call to the public on the issues of ADEQ updates. Anybody  
9 else who has a comment left?

10 MR. KENNEDY: John Kennedy. I disagree with  
11 reducing the number of meetings because -- until we  
12 clearly get the issues resolved, and there were at least  
13 three pages of parking lot issues in the four-plus years  
14 of the development of the risk-based corrective action  
15 document. And part of the agreement was we would get  
16 those all resolved. Those are leading directly to  
17 appeals.

18 So I think the Department seriously needs to  
19 consider whether they take their resources and put it into  
20 meetings in resolving the technical issues in the guidance  
21 as opposed to them meeting and resolving the issues in  
22 appeal. So they are going to be spending the time --  
23 Those of us that are sitting here may understand what Joe  
24 is talking about or we may be able to communicate because  
25 of this forum. But there are a lot of people that are out

1 there that have that guidance document in their hands, and  
2 that's the only thing they have to go by.

3 And there are numerous technical issues that  
4 need to be clarified that will be leading to appeals. So  
5 I think to resolve that.

6 Also from the standpoint of Ron, number of  
7 people, the last technical subcommittee meeting had about  
8 16 people, I think, at the meeting. I think eight or nine  
9 were DEQ people. So maybe what you need to consider is to  
10 have a working group and pick a person because these are  
11 different topics. And I think if we identify the topic  
12 properly prior to the meeting going, we can do that. I  
13 don't bring all of my employees to the meeting, but I do  
14 have a meeting prior to going to the technical  
15 subcommittee so I've got my project managers' input on  
16 what their concerns are and try to bring that forward.

17 Maybe if you consider -- I mean, Joe is doing  
18 way too many things. Maybe some of the other technical  
19 reviewers can be selected to do these individual  
20 components and then go back and report that internally.  
21 Maybe that would be a way to resolve it rather than having  
22 everybody at every meeting.

23 CHAIRMAN O'HARA: Thank you. Any other  
24 comments from members of the public? Great, thank you.

25 I would like to call for a break at this time.

1 If we could all return in about ten minutes, appreciate  
2 it. Thank you.

3 (Whereupon, a recess was taken from 10:25  
4 o'clock a.m. to 10:45 o'clock a.m.)

5 CHAIRMAN O'HARA: I would like to go ahead  
6 and reconvene the meeting. Before we move on, I was  
7 remiss earlier in not recognizing both Leandra and -- How  
8 do you --

9 MS. LEWIS: Leandra.

10 CHAIRMAN O'HARA: -- and George Tsiolis.  
11 They did -- they were present, and they came in earlier in  
12 the meeting. For the record, they are here and sitting in  
13 on our Commission.

14 I would like to move on to Item Number 5, which  
15 is the technical subcommittee and turn this over to our  
16 technical subcommittee chairman, Hal Gill.

17 MR. GILL: Thank you, Mr. Chairman. I would  
18 like to make a statement first. Typically, when I --  
19 before I berate Judy -- She is not here to hear this  
20 unfortunately. In the past I have always given, as Dan  
21 did, I have given the SAF kudos for, indeed, doing a good  
22 job. And I neglected to do that this time. But they are,  
23 indeed. You obviously can see the difference in the  
24 number of determinations that are being made. So I do  
25 want to say that.

1           But I also -- you need to understand that I get  
2   calls from numerous consultants, and I have to pass their  
3   information on. Some of it I agree with, some of it I  
4   don't. But they are calling me as representing them, and  
5   I have to pass on what is said. But I did see -- we've  
6   got numerous phone calls at my office over the last couple  
7   months. Some of them were good calls, some of them  
8   weren't so good. We did see some determinations that came  
9   through that were favorable. We saw others that were  
10   frustrating. But overall, I agree that we are seeing a  
11   real good increase in activity, but I did need to pass on  
12   the frustration of the consultants that called me.

13           Now I'll move on. We had a technical  
14   subcommittee and the 9th, was, I think, the date. And,  
15   actually, you have a summary of what we discussed. I  
16   don't want to go into all kinds of detail on this, just to  
17   discuss the issues that we are looking at right now, which  
18   are basically the bulletin board and the groundwater  
19   monitoring and corrective action reporting.

20           But basically the bulletin board, I guess the  
21   discussion we had earlier in the meeting was the name  
22   because that had come up in the last Policy Commission.  
23   And we were told by the AG present at that meeting that  
24   our original language of calling it a decision log or  
25   determination log was not -- we couldn't use that because

1 that had some legal ramification, and that was the reason  
2 that DEQ wanted to call it a bulletin. Not knowing the  
3 legal side of it, I don't know if that's true or not.

4 I am finding that there are still problems. As  
5 Judy mentioned, we've been working on the form that is to  
6 be submitted to me, lucky me, for people that do have  
7 suggestions for this bulletin board. And what are we  
8 calling it, the bulletin board request form? And the  
9 difficulty I'm having, and we were discussing it on the  
10 phone trying to come up with items to put on that form,  
11 was the clarity so anyone, mom and pop or major oil or an  
12 owner -- any other owner-operator or the consultants,  
13 would understand what this was because that was the  
14 difficulty. And I think Theresa had some concern back in  
15 the last Policy Commission changing this to a bulletin  
16 board, what does that mean.

17 I sent it out when we had finally arrived at --  
18 Judy and I had some conclusions on what we were going to  
19 put on it. I sent it out. And that's, indeed, what I got  
20 back. They didn't know what it was for. If you haven't  
21 been in these meetings, the technical subcommittee  
22 meetings, you haven't heard all the discussion as to what  
23 this bulletin board is for. So people did not understand  
24 what we were asking them for. That is still an issue by  
25 calling it a bulletin board, is people knowing what it's

1     for and what they are supposed to do with these request  
2     forms.

3             Judy.

4             MS. NAVARRETE: Let me make a comment on  
5     that, Hal. It's on the Web. The form for the regulated  
6     public we haven't finished that, but the UST SAF bulletins  
7     are on the Web now. And I handed out, and there is some  
8     back here, as to how -- the path to how you can get to  
9     that. And I think that's going to be made more  
10    self-explanatory when people look at them and see how they  
11    are going to be used because there is one example up there  
12    now and that's on the contract form.

13            So as we get bulletins up there, it is going to  
14    become more self-explanatory as to how you can get one put  
15    on there. And it is not going to have to be that you --  
16    the submissions to you have to be so technical and so  
17    precise and everything. We can work on that, on how we  
18    want to present those. But it is up there for everyone to  
19    see and take a look at. And I think it will be a little  
20    more self-explanatory, and we can work on that form and  
21    get that on there ASAP.

22            MR. GILL: Is there language on the Web that  
23    explains what the concept is? That's kind of what I am  
24    getting at. When I looked at the form, which I brought  
25    with me somewhere -- And, again, we were looking at this.

1 And I know we tried to put ourselves in someone else's  
2 shoes and said, okay, if we didn't know what was going on,  
3 would this make sense? And we thought we had succeeded.  
4 When I sent it out, people still didn't understand it.

5 And I think the reason they don't understand it,  
6 they don't know what the original concept was, what are we  
7 asking for or what is this form used for. I think we need  
8 to have some kind of language on the Web at this location.  
9 Plus, I will send out to anybody that I can find an e-mail  
10 for that same concept. But I think that really needs to  
11 be distributed to everybody so people that have not been  
12 at all the meetings understand what we are trying to do  
13 here. And, actually, now that I think about it, because  
14 we do have new Policy Commission members, I probably  
15 should real briefly explain what we are talking about.

16 As was alluded to in a number of comments,  
17 we're -- the reason for a number of appeals is that the  
18 stakeholders have been saying that these decisions or  
19 determinations or policies that have been coming forth  
20 were not known to the general regulated public. And the  
21 only way we are finding out about them is in  
22 determinations, which, therefore, ends up in appeals. So  
23 we are trying to get away from this.

24 We were trying to come up with what we were  
25 originally calling a decision log to where if a decision

1 was made and finalized in an informal appeal or internal  
2 meetings with the Department, that this is the way the  
3 Department was going to handle this issue from this point  
4 forward. And it was not a site-specific issue. It was  
5 something that went across the board for all  
6 owner-operators and could affect all of them as far as the  
7 work that was being done and the application for  
8 reimbursement, the fact that we needed to get this on the  
9 decision log. And then we worked through, with Judy's  
10 help and the SAF section, to get this on the Web, that  
11 this decision log at that time would ultimately be  
12 provided for anybody to get into it.

13 And that's what our monthly subcommittee  
14 meetings are for right now is to look at these issues that  
15 have been creating all the appeals and come to a consensus  
16 with the Department and the stakeholders at those  
17 meetings, that this is, indeed, one of these decisions and  
18 then bring it forward to the Policy Commission. And then  
19 ultimately it would be voted on by the Policy Commission.  
20 Then it would go on this log.

21 As you heard at the beginning of my diatribe  
22 here, we were having problems with what to call it. It  
23 ends up being a bulletin. That's where we kind of are  
24 now. We had some concerns, they really don't know what we  
25 are asking for. So as I said, I think we just need to get



1 the language out there somewhere on the Web as well as  
2 talk to everybody we can to explain what this is.

3 MR. KERN: For the record, Ron Kern with  
4 DEQ. One of the issues associated with the UST  
5 bulletin -- UST and SAF bulletin, we are also going to be  
6 putting it out in some sort of a newsletter or other hard  
7 media. We are finalizing a newsletter right now. That  
8 will be captured so we can capture also what the intent is  
9 and where people can go to access it. So that will be  
10 hitting more of the stakeholder population throughout  
11 Arizona at that point.

12 MR. GILL: Good, good. Had I heard that  
13 before?

14 MR. KERN: Yes, yes, you have. In fact, it  
15 is in the summary.

16 MR. KELLEY: You said that.

17 MR. GILL: That's great. One other issue on  
18 that, it was in the technical subcommittee meeting that --  
19 Is Phil still here? Darn. I'll just have to -- I was  
20 hoping Phil would be here. People that were in the  
21 meeting, Ron, if you heard this differently, let me know.  
22 I thought that I had heard Phil say that, again, the idea  
23 of the technical subcommittee going through these -- they  
24 are decisions. I don't know what else to call them. They  
25 are going to go to the bulletin board but they are

1 decisions. We go through these decisions that are being  
2 made. If we can reach consensus between the Department  
3 and the stakeholders in that meeting, then we will bring  
4 that forward, that decision which is going to go on the  
5 bulletin board, to the Policy Commission. The Policy  
6 Commission will look at it and vote whether it should go  
7 on the bulletin board. We assume if we reached consensus,  
8 it should be no problem.

9           This is what is in the recommendations that went  
10 to the Director earlier, is that if the technical  
11 subcommittee cannot reach consensus on that issue, the  
12 argument -- the two arguments are brought forward to the  
13 Policy Commission. And the Policy Commission will hear  
14 the arguments and then vote on whether or not they  
15 believe, first, that it is not site specific, that it is  
16 across the board, and whether or not it should go on the  
17 bulletin board.

18           The statement I heard Phil make, and it just  
19 dawned on me the other day, is that the DEQ will not put  
20 on the bulletin board decisions, policy, whatever we call  
21 it, that they do not agree with. And I wanted --  
22 Unfortunately, Phil is not here -- which kind of goes --  
23 is completely the opposite of what was in the  
24 recommendation that went to the Director. I wanted to  
25 know if the DEQ could comment on that. Are we on the same

1 page here?

2 I mean, if -- Now, granted when the Policy  
3 Commission votes on it, if it is a consensus that's not  
4 been reached and the Policy Commission votes that they  
5 have agreed, this should go on the bulletin board, that a  
6 recommendation goes to the director and the cast of  
7 characters. The director, it is still his decision  
8 whether or not to put that on the bulletin board. But I  
9 was concerned with what I thought I heard Phil say.

10 MR. KERN: Ron Kern. This concept is a work  
11 in progress. What DEQ would like to do is use this as a  
12 customer service to provide information because the issue  
13 that we heard was that a lot of the information that's  
14 coming out of decisions, that's coming out of statutes,  
15 that's coming out of appeals and the like is not being  
16 heard by the public at large that really needs to hear,  
17 get this information.

18 So we are using this primarily as a mechanism to  
19 provide this information to the regulated public at large.  
20 That's the primary intent of that. That is not to say  
21 that we may not address some of the specific issues that  
22 you are bringing or something comes up that goes through  
23 the technical subcommittee eventually. Right now the main  
24 focus is to provide information. That was the main issue  
25 we heard, and we are addressing that.

1                   MR. GILL: And so I agree completely. There  
2 is the possibility that it could come down to a  
3 recommendation going to the Director and the Director  
4 makes the final decision on that particular issue and  
5 then, depending what the decision is, whether or not we  
6 take it any further or whatever. Okay.

7                   That was the first issue on the agenda for the  
8 subcommittee. And it sounds like we can address -- can  
9 and will address the issue of concern over what its  
10 called. Did you have any more concerns about that,  
11 Theresa?

12                  MS. FOSTER: No.

13                  MR. GILL: I think the point is getting the  
14 information out as best we can.

15                  The next item that we discussed was -- And,  
16 again, I'm not going to go into this at all because this  
17 is still a work in process. There were basically problems  
18 that are creating numerous appeals with the groundwater  
19 sampling and water level monitoring. And it is basically  
20 an issue that's been going on forever. But there is a lot  
21 of confusion as to what is required, what is needed. And  
22 so we had -- most of our discussion was on this issue,  
23 although we were interrupted three times by a fire drill.  
24 So, actually, we did fairly well to get through as far as  
25 we got with spending most of our time in the parking lot.

1 I'm not ready to go into this at all because  
2 there is no real reason to at this point. Basically  
3 we're -- as I think Judy mentioned, we are going to be  
4 working on providing a matrix in combination with a  
5 statement from DEQ that will explain the process for  
6 groundwater sampling and the water level measurement, the  
7 issue being whether or not it is continued quarterly or it  
8 is site specific. That's really what the issue is. This  
9 is a huge issue for appeals, and we are trying to resolve  
10 that. That is still working. Once we finalize that,  
11 we'll bring that forward and I will give a little bit more  
12 of a background on it for the members.

13 Another issue that was on the agenda that we did  
14 not get to was looking at the new policy, verifying the  
15 confirmation of underground storage tank releases. And  
16 then the last two technical subcommittee meetings ago we  
17 asked for the existing policies which are listed on the  
18 agenda, 0080 and 0108.

19 One thing I did find out in talking to DEQ that  
20 I don't know was necessarily understood two meetings ago,  
21 is DEQ would like written comments on the existing policy  
22 because last time we had a lot of discussion. But they  
23 were evidently expecting written comments as well. So  
24 basically they need the written comments so they can look  
25 at those comments and be prepared to respond to them when

1 we get to this agenda item hopefully next month.

2 So that was just something I happened to find  
3 out, is they do need some written comments, concerns,  
4 questions, on the draft policy. And then seeing as we now  
5 have the two other policies because that was where maybe  
6 the misunderstanding was, DEQ thought because we had  
7 requested the existing policies they wanted us to look  
8 at -- we wanted to look at those and then compare them and  
9 make comments so that's what they were waiting for. So  
10 that's why nothing has been forthcoming.

11 So we -- I would say we need to -- anyone that  
12 has comments on the draft policy in conjunction with the  
13 two existing policies, get that to DEQ so we will be  
14 prepared to discuss it at the next meeting because that  
15 has been a difficulty, if we go in there expecting a  
16 discussion and they have not received anything to where  
17 they don't know what our comments are, they feel they are  
18 limited in what they can discuss. So we do need to get  
19 those comments into them.

20 And I can -- if anyone has any questions in more  
21 detail on any of these issues in here, I can try to go  
22 over them for you. I guess that's my update.

23 CHAIRMAN O'HARA: Any questions or comments  
24 from committee members? Anyone in the public like to  
25 comment on the technical subcommittee?

1           MR. GILL: The next meeting is February 13th  
2 and it's in the Grand Canyon Room at the Capitol, which is  
3 in the basement, and it's nine to noon. All the meetings  
4 with the exception of the February 13th meeting are in the  
5 first floor conference room in the Capitol, nine to noon.  
6 As you walk in the west entrance, make an immediate right  
7 and go through one swinging door and it is the immediate  
8 right again, and that's where the room is.

9           CHAIRMAN O'HARA: Great. Thank you.

10           Okay. Moving on to Item 6, financial  
11 subcommittee update. And I've got this item on the  
12 agenda. I just wanted to keep the members informed as to  
13 the status of our financial subcommittee. There is  
14 currently two issues that we have been requested to study  
15 in-depth. And the first one is the review of the 21  
16 percent administrative budget for the State Assurance  
17 Fund. And the subcommittee sent a request to the  
18 Department of Environmental Quality in early December.  
19 And I have talked with both Bob and Ron Kern, and they are  
20 working diligently on gathering that information because  
21 we requested quite a bit and it will take some time to  
22 gather. And as soon as we get that information, we will  
23 schedule a subcommittee meeting and notify everyone,  
24 probably post that on the Web site.

25           The second issue, very similarly, this is an

1 issue that's been carried forward from several meetings.

2 I know that Ron is working very hard to gather data on  
3 funding for the UST inspection and compliance program.

4 And real quick, Ron, do you expect to have  
5 information for both of these topics at the same time, or  
6 is there going to be one meeting? Or do you want to --  
7 maybe one come first?

8 MR. KERN: Ron Kern. Basically I think they  
9 should be addressed at different meetings so we don't go  
10 at cross-purposes. I think they are significant in and of  
11 themselves, that we should probably have separate meetings  
12 would be my suggestion.

13 CHAIRMAN O'HARA: Great. I'll notice  
14 everyone once we get that information and are ready for a  
15 meeting.

16 Any questions from committee members on these  
17 topics? Any questions from members of the public on the  
18 financial subcommittee? Okay, great.

19 Move on to Item 7, discussion of agenda items  
20 for next month's meetings. I know -- I would like to  
21 mention one that came to mind. Now that we've got new  
22 members, it is probably a good idea to revisit our  
23 mandates and statutes and our purpose, have a discussion  
24 of that so everybody is familiar with it. And we may want  
25 to adopt some rules of order -- some more formal rules of



1 order at that time, have a general discussion for the  
2 benefit of the committee members.

3 MS. HUDDLESTON: Mr. Chairman, I have little  
4 knowledge of how you proceed on this. But I was wondering  
5 because you now have new members. And I believe Laurie  
6 Woodall in our office is the attorney assigned for this  
7 Commission. Would it be appropriate for her to come and  
8 maybe give a small briefing on conflict issues and open  
9 meeting laws?

10 CHAIRMAN O'HARA: That would be a great  
11 idea. I'll call Laurie and schedule that.

12 MS. HUDDLESTON: Okay.

13 MR. GILL: We had specific language for the  
14 Commission, too, on conflict of interest we need to find  
15 and fill out.

16 CHAIRMAN O'HARA: That's all in open  
17 meeting? We don't need an executive session?

18 MS. HUDDLESTON: No. You can do that at the  
19 meeting.

20 CHAIRMAN O'HARA: Great. Any other topics  
21 Commission members would like to discuss at the next  
22 meeting?

23 MS. DAVIS: Mr. Chairman, we need -- I would  
24 like to be able to have on the agenda the issue of  
25 insurance payments. There has been a review by the agency

1 and on the advice of the Attorney General of 49-1054(e).  
2 It's been determined that it is actually illegal for us to  
3 pay to insurance companies.

4 And, Judy, is that going up on the bulletin?

5 MS. NAVARRETE: There will be something on  
6 the bulletin about that within the next couple of days.

7 MS. DAVIS: Okay. And this issue came about  
8 as a result of another case that was sort of a secondary  
9 issue that came up. And there was a large meeting with a  
10 lot of attorneys. And the decision of the agency out of  
11 that meeting is that it's illegal for us to be reimbursing  
12 insurance companies. And there are few exceptions to  
13 that, but I would like for it to have an open venting at  
14 the next Policy Commission. I think Tamara or somebody  
15 else can help us out with that.

16 CHAIRMAN O'HARA: I have heard of that  
17 issue. I would just kind of make the request as part of  
18 that presentation, could the Department consider how that  
19 decision affects not payments to insurance companies but  
20 payments to owner-operators who have insurance?

21 MS. DAVIS: Yes.

22 CHAIRMAN O'HARA: And secondly how it  
23 affects self-insureds, if at all?

24 MS. DAVIS: Owners and operators and  
25 self-insureds specifically.

1                   CHAIRMAN O'HARA: That would be great, yeah.

2                   Any other topics? Theresa.

3                   MS. FOSTER: Mr. Chairman, do we need to  
4 make a selection for co-chair?

5                   CHAIRMAN O'HARA: I think we'll have that on  
6 the agenda. That's a good suggestion. And any committee  
7 chairmanships or even chairmanship, that if anyone would  
8 like to have this much fun, would like to share in the  
9 fun. Good suggestion.

10                  Any other topics? Okay.

11                  MR. GILL: I have one more comment. I  
12 talked with Ron Kern at the break, and we kind of left  
13 hanging the issue with the meetings. I liked Joe's  
14 comments and request for comments on the corrective action  
15 guidance document. There are many, many small issues that  
16 there is no reason to discuss those in another meeting.  
17 So I do request that all -- anybody that has comments on  
18 the guidance document, that -- like, small language  
19 changes or mistakes or something like that, send those to  
20 Joe so we can get those made.

21                  Also, if anyone identifies any major issues,  
22 send those to me as well in that -- and we can prioritize  
23 and put those on the technical subcommittee agenda. We'll  
24 try to handle and see how well we are doing and moving  
25 these things through with one meeting a month. But if

1   there is just real, real problems occurring, then I would  
2   just like to leave it open, that if I really feel that  
3   we -- based on the issues and basically what I'm hearing  
4   are a number of appeals on that issue that are coming  
5   through that we need to move forward, at that time I might  
6   ask if there is a way we could put another meeting in at  
7   that time. But for now we'll try to get the major issues  
8   from the guidance document to me so we can prioritize them  
9   and put them on the technical subcommittee agenda.

10                   CHAIRMAN O'HARA: Thank you. Any other  
11   issues from committee members? At this time, I would like  
12   to move to Item 8, general call to the public. Ron Kern.

13                   MR. KERN: I guess I'll take any call to the  
14   public. Basically, in light of Laurie Woodall potentially  
15   giving an update from a legal standpoint to Commission  
16   members, the agency would like to offer people such as  
17   Leandra and anybody else here a little update on some of  
18   the -- or a little class, if you will, on some of the  
19   program issues, some basics of the program, and maybe some  
20   of the statutory sort of things too. And we will try to  
21   put that together. So if there is interest, please let me  
22   know or let Al Johnson know and we'll do that for you.

23                   CHAIRMAN O'HARA: Great, thank you.

24                   MS. DAVIS: Mr. Chairman, Al, would you  
25   stand up, just for the folks that are new on the

1 Commission. This is Al Johnson. He works with Ron Kern,  
2 and he is the ombudsman for the UST program. And he does  
3 a lot to put these Commission meetings together. And he  
4 will be working with the new members to develop any sort  
5 of orientation. So I just wanted folks to know what he  
6 looked like and he is the go-to guy in setting these  
7 things up. Thanks, Al.

8 CHAIRMAN O'HARA: Any other comments from  
9 members of the public? Any topics? Wow. Great.

10 Almost. Mr. Pearce.

11 MR. PEARCE: How soon we forget. Just a  
12 couple suggestions for the agenda next time, if I can. I  
13 hate to burden the Department, but if there can be some  
14 analysis that wouldn't completely distract them from what  
15 they are trying to do, which is admirable, of informal  
16 appeals, I think that would be helpful. That's the kind  
17 of question we get a lot from legislators, people out in  
18 the public as well. So a number of informal appeals the  
19 Department's been handling on a monthly basis or any kind  
20 of information about how many it has in the queue now,  
21 anything that's drivable between now and next time would  
22 be great.

23 Secondly, if it's possible to ensure that we  
24 have on the agenda the Department's interpretation of the  
25 administrative appeals process for situations where it

1 does not meet statutory time frames, what rights that  
2 gives a party.

3 And I would love to see on the agenda some  
4 discussion regarding what the appropriate consequence  
5 should be for the Department's failure to meet a deadline  
6 in statute for a report.

7 And, third, if we could have on the agenda some  
8 update on what the Department intends to do by way of  
9 staffing RBCA reviews and DEUR submittals for the UST  
10 section. These are some issues that I know are under  
11 discussion, but many are not privy to those meetings and  
12 so forth. And I'm not criticizing the Department. I  
13 think this would be a good forum to air out wherever they  
14 are in that process in RBCA reviews.

15 CHAIRMAN O'HARA: Any members like to see  
16 those issues prepared and discussed?

17 MS. DAVIS: On RBCA and DEUR, sure.

18 CHAIRMAN O'HARA: If there is others, we can  
19 discuss it. Thank you.

20 Thank you, John.

21 Patricia.

22 MS. NOWACK: Thank you, Mr. Chairman,  
23 members of the Commission. Again, my name is Patricia  
24 Nowack. I'm wondering how we can put 49-1054(e) on the  
25 agenda. It is, indeed, an item that's under appeal where

1 the judge and the Department has not rendered a decision  
2 yet and maybe something we need to ask Laurie or somebody  
3 else. But we were told earlier we couldn't discuss other  
4 issues that are currently under appeal or in the appeal  
5 process, and that issue definitely is in the appeal  
6 process because I'm a witness and gave a deposition in the  
7 last couple of days about it, just for your information.

8 CHAIRMAN O'HARA: That's a question for  
9 Laurie because what are our limitations in discussing  
10 issues? The Department has a policy, but it is being  
11 litigated. Is that off limits for us to discuss?

12 MS. HUDDLESTON: I don't think it is  
13 entirely off limits. I need to talk to Laurie, and she'll  
14 answer that question. I think there are certain issues we  
15 can discuss. We just need to --

16 CHAIRMAN O'HARA: Control the way it is  
17 discussed?

18 MS. HUDDLESTON: Yes. Not to provide a  
19 second forum for a hearing.

20 CHAIRMAN O'HARA: I gotcha. We'll have  
21 Laurie present that next meeting.

22 MR. SMITH: Mike.

23 CHAIRMAN O'HARA: Myron.

24 MR. SMITH: This could really get to be  
25 interesting, that there are many issues under appeal that

1     there will be decisions rendered that could virtually lock  
2     us up and not be able to discuss a damn thing.

3                 MS. DAVIS:   I doubt that, Myron.

4                 MR. SMITH:   If we take it literally.   I  
5     mean, there are appeals on guidance issues.   There are  
6     appeals on parts of the corrective action rules.   I hate  
7     to see us all get locked up here and not be able to  
8     discuss anything.

9                 MR. GILL:    There should be a way to discuss  
10    the general issues because that's exactly what we are  
11    doing in the technical subcommittee meetings.   There are  
12    numerous appeals on the groundwater sampling issues, but  
13    we're trying to come up with a program that is -- that the  
14    Department and stakeholders can reach consensus on, this  
15    is what the Department wants from this point forward.

16                CHAIRMAN O'HARA:   Patricia.

17                MS. NOWACK:   But this particular issue  
18    affects every single owner-operator out there.   And it is  
19    a major, major change in policy, change in direction, how  
20    the Department has ever implemented the financial  
21    responsibility requirement and how they're implementing it  
22    and how the SAF is processing the claims.   It is a major  
23    issue.

24                CHAIRMAN O'HARA:   Thank you.

25                MR. PEARCE:   Just to add to that, if I can



1 make one more, quickly. Mr. Pearce. I would like  
2 Ms. Woodall to maybe explain to us why a policy, a  
3 procedure of general application can't be the subject of  
4 these Policy Commission hearings, these meetings here.  
5 Certainly, if it was -- We don't want to get into  
6 discussion of merits of one particular issue. But if it  
7 extends across the board to many owner-operators, if the  
8 issue is going to apply to everybody or a great deal of  
9 people, it seems to me it would not create the kind of  
10 conflict that might arise if the merits of a particular  
11 matter were being discussed here. I think there needs  
12 some explanation of what overrides what. Does the fact it  
13 has general applicability override the fact that it is  
14 also the subject of litigation or vice versa?

15 CHAIRMAN O'HARA: Any other comments from  
16 members of the public? Thank you.

17 Next meeting to be announced, I believe it is  
18 the third Wednesday of the month. I'm not sure of the  
19 date. Fourth Wednesday.

20 MR. GILL: 26th.

21 CHAIRMAN O'HARA: February 26th in this  
22 room. Thank you for attending, and this meeting is  
23 adjourned.

24 (Whereupon, the proceedings adjourned at  
25 11:19 o'clock a.m.)

3  
4 I, JENNIFER SCHUCK, Certified Court  
5 Reporter, Certificate No. 50020, State of Arizona, do  
6 hereby certify that the pages numbered from 1 to 81,  
7 inclusive, constitute a full, true, and accurate  
8 transcript of all proceedings had in the foregoing matter,  
9 all done to the best of my skill and ability.

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